

Meeting: Planning and Development Committee **Agenda Item:**

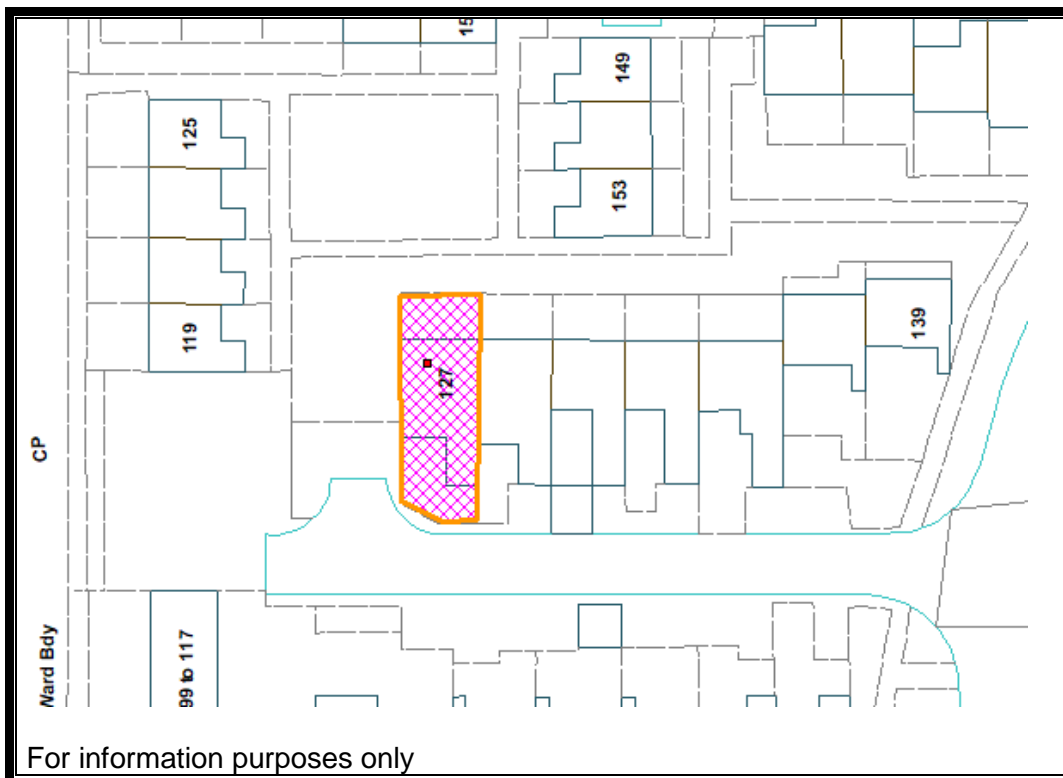
Date: 31 October 2023

Author: Linda Sparrow 07931 863551

Lead Officer: Zayd Al-Jawad 01438 245257

Contact Officer: Linda Sparrow 07931 863551

Application No :	23/00631/CLEU
Location :	127 Ripon Road, Stevenage
Proposal :	Certificate of Lawfulness for (Existing Use) for the use of the property as 6-bed House of Multiple Occupation (Use Class C4)
Drawing Nos.:	Site Location Plan;
Applicant :	Mr E Fletcher
Date Valid:	15 August 2023
Recommendation :	CERTIFICATE OF LAWFULNESS APPROVED



1. SITE DESCRIPTION

- 1.1 The application site comprises an end of terrace Radburn style property within a residential area of Stevenage.

2. RELEVANT PLANNING HISORY

- 2.1 2/0198/65, St Nicholas Area. Development including residential, shopping, schools and road. Granted.
- 2.2 2/0104/68, St Nicholas Area. Residential development of 435 dwellings and 170 garages under St Nicholas Phase 5. Granted.
- 2.3 2/0202/68, St Nicholas Area. Residential development of 405 dwellings, 30 old people's flats and 196 garages. Granted

3. THE CURRENT APPLICATION

- 3.1 This application is a Lawful Development Certificate (Existing) for the use of the property as a 6-bed House of Multiple Occupancy (HMO) under Use Class C4. The property is not served by any off-street car parking.
- 3.2 The application site is not located in a Conservation Area or any other Article 2(3) land and it is not a listed building. The permitted development rights for the change of use from a Class C3 dwellinghouse to a C4 HMO were removed on 20 September 2017 by way of an Article 4 Direction (see points 3.3 and 3.4 below). Prior to this date, such a change of use would have been permitted development under the General Permitted Development Order 2015 (as amended) (GPDO) that was in force at the time.
- 3.3 The Council adopted an Article 4 Direction on 20 September 2017. This Direction covers development comprising the change of use of a building from a use class within Class C3 (dwellinghouses) of the Schedule to the Town and Country Planning Act (Use Classes) Order 1987 (as amended), to a use falling within Class C4 (HMO) of that Schedule, being development comprised within Class L(b) of Part 3 (Changes of Use) of Schedule 2 of the Order and not being development comprised within any other Class. The Direction covers the whole of Stevenage Borough Council.
- 3.4 The Article 4 Direction has the effect that any development described above in point 3.3 should not be carried out on land within the district of Stevenage Borough unless planning permission is granted by the Local Planning Authority.
- 3.5 This application comes before the Planning and Development Committee because it has been called-in by Local Ward Councillor Sandra Barr.
- 3.6 This application was originally put before the Committee on 3rd October 2023. Following a debate by members of the Committee, it was determined to defer the application to enable a selection of redacted evidence documents to be shared with the Committee.

4. PUBLIC REPRESENTATIONS

- 4.1 Planning Practice Guidance paragraph 008 Reference ID 17c-008-20140306 states that there is no statutory requirement to consult third parties, including neighbours. It goes on to state that views expressed by third parties on the planning merits of the case are irrelevant when determining the application.

5. CONSULTATIONS

- 5.1. Planning Practice Guidance paragraph 008 Reference ID 17c-008-20140306 states that there is no statutory requirement to consult third parties. It goes on to state that views

expressed by third parties on the planning merits of the case are irrelevant when determining the application.

6. RELEVANT PLANNING POLICIES

- 6.1 Section 191 of the Town and Country Planning Act 1990 (as amended) provides that any person who wishes to ascertain whether any existing use or operation/development is lawful may make an application to the Local Planning Authority for a Lawful Development Certificate (LDC).
- 6.2 Section 191(4) states that *“if on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application”*.
- 6.3 Section 171B(3) relates to enforcement of breaches in planning control and states that *“In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach”*.
- 6.4 National Planning Practice Guidance summarises the position in paragraph 003 (17c-003-20140306) in the following terms, *“lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.”*

7. APPRAISAL

- 7.1 The application seeks a Lawful Development Certificate to confirm that the property has been operating as a HMO since 2015, prior to the introduction of the town-wide Article 4 Direction in 2017 which requires all HMO's to now apply for planning permission (see point 3.3 above).
- 7.2 The applicant has submitted evidence of rental agreements, bank statements and property management invoices and inspections which corroborate the application and prove that on the balance of probabilities, the property has been in continuous use as an HMO since 2015.
- 7.3 Section 171B(3) relates to time limits for enforcement action against changes of use that have occurred without the benefit of planning permission when said planning permission was required at the time the change of use occurred, and that this enforcement period lasts for 10 years from the time of the breach in planning control.
- 7.4 However, an appeal decision in 2019 (Appeal Ref. APP/K1935/X/18/3218192) at 80 Kymswell Road, Stevenage, against refusal of a Lawful Development Certificate reference 18/00600/CLED, established that Section 171(B) Time Limits, of the Town and Country Planning Act 1990 (as amended), relating to the 10-year rule for uses of premises do not apply to Lawful Development Certificates of this type when the use was established to be permitted development prior to the Article 4 Direction.
- 7.5 The Inspector noted: *“At the time the change of use occurred the GPDO that was then in force included an amendment that had introduced provisions under Class 1 of Part 3 to Schedule 2 which granted permission for development consisting of the change of use of a building to a use falling within Class C4 of the Schedule to the Use Classes Order from a use falling within Class C3, and vice versa. It follows that at the time the change of use*

occurred the development was lawful. The Article 4 Direction cannot be retrospective, the lawful use must still exist and there has not been a breach of planning control”.

- 7.6 Taking the aforementioned into account, it is therefore considered that the applicant has provided sufficient evidence to show that the property has been in operation as an HMO since 2015. Further, the commencement of the use of the premises as an HMO in 2015 was permitted development under the GPDO at the time and as such the use was established as permitted development prior to the enactment of the Article 4 Direction.
- 7.7 The Council is therefore satisfied that under Section 191(4) of the Town and Country Planning Act, a Lawful Development Certificate can be issued for this element of the development.
- 7.8 List of evidence provided to members of the Committee:
- Statutory declaration from applicant dated 14 September 2023;
 - Rent Statement from management company for October/November 2015;
 - Rent Statement from management company for March 2023;
 - Letter from SBC Environmental Health regarding HMO Licence dated May 2017;
 - Property Inspection Report dated November 2016;
 - Property Inspection Report dated January 2017;
 - HM Court paperwork regarding S.21 eviction of Room 3 tenant in 2017.

8. CONCLUSIONS

- 8.1 It is considered that on the balance of probabilities, the use of the property as a HMO is lawful as it came into use in 2015 when such changes of use were permitted development. Therefore, for the purposes of s.171B(3) of the Town and Country Planning Act 1990 (as amended) it is considered that the use of the property known as 127 Ripon Road as a HMO to be lawful.

9. RECOMMENDATIONS

- 9.1 That the Certificate of Lawfulness is approved, subject to the following condition:
- 1 On the balance of probabilities the evidence that has been provided has demonstrated that No. 127 Ripon Road was operating as a C4 House of Multiple Occupation prior to 20 September 2017 when the Council's Article 4 Direction came into force, and is, therefore, a lawful use that is exempt from enforcement action.

10. BACKGROUND DOCUMENTS

1. The application file, forms, plans and supporting documents having the reference number relating to this item.
2. Stevenage Borough Local Plan 2011 – 2031 adopted 2019.
3. Central Government advice contained in the National Planning Policy Framework September 2023 and Planning Practice Guidance.